

a result of an Extraordinary Event Halt, trading and quotations in the OTC market for the OTC Equity Security may resume when FINRA determines that the basis for the halt no longer exists, or when ten business days have elapsed from the date FINRA initiated the trading and quotation halt in the security, whichever occurs first. In addition, FINRA will be permitted to extend an Extraordinary Event Halt for subsequent periods of up to ten business days each if, at the time of any such extension, FINRA finds that the extraordinary event is ongoing and determines that the continuation of the halt beyond the prior ten business day period is necessary in the public interest and for the protection of investors.¹⁶

III. Discussion and Commission's Findings

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of Section 15A(b) of the Act¹⁷ and the rules and regulations thereunder applicable to a national securities association.¹⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁹ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest, and Section 15A(b)(11) of the Act,²⁰ which requires, among other things, that FINRA rules relating to quotations be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission believes that FINRA's trading and quotation halt rule for OTC Equity Securities, when

appropriately applied under the circumstances specified in the rule, as proposed to be amended, is designed to promote the protection of investors and the public interest and to produce fair and informative quotations, and to prevent fictitious or misleading quotations, for OTC Equity Securities. Permitting FINRA to initiate a trading and quotation halt as a result of a Foreign Regulatory Halt that is imposed for news pending should enable FINRA to initiate trading and quotation halts in OTC Equity Securities under a broader set of circumstances than currently exists, which could help to reduce the potential that investors may trade on incomplete or inaccurate information in these securities. In addition, permitting FINRA to initiate a halt as a result of a Foreign Regulatory Halt or Derivative Halt upon notice from another reliable third-party source where FINRA can validate the information provided should allow FINRA to initiate a halt more promptly when such a halt is warranted.

The Commission further believes that the provisions relating to the duration of a trading and quotation halt are reasonably designed to protect investors and the public interest and to produce fair and informative quotations, and to prevent fictitious or misleading quotations, for OTC Equity Securities. The Commission believes that it is reasonable for a halt in an OTC Equity Security as a result of a Foreign Regulatory Halt or a Derivative Halt to run concurrently with, and for as long as, the halt imposed on the security in the market on which it is listed or registered. In addition, allowing FINRA to extend an Extraordinary Event Halt for subsequent periods of up to ten business days will help allow for resolution of the event before trading and quoting in the OTC market for the OTC Equity Security resumes. The Commission notes that FINRA would be permitted to extend an Extraordinary Event Halt only if it finds that the extraordinary event is ongoing and determines that the continuation of the halt beyond the initial ten business day halt period is necessary and appropriate in the public interest and for the protection of investors.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-FINRA-2012-010) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68872; File No. SR-MSRB-2013-01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Relating to Amendments to MSRB Rules G-37 and G-8 and Form G-37

February 8, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 4, 2013, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change consisting of amendments to Rules G-37, on political contributions and prohibitions on municipal securities business, and G-8, on books and records, and Form G-37 (the "proposed rule change"). The MSRB requested an effective date for the proposed rule change of no later than the start of the second calendar quarter following the date of SEC approval.

The text of the proposed rule change is available on the MSRB's Web site at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2013-Filings.aspx, at the MSRB's principal office, and at the Commission's Public Reference Room.

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁶ See proposed FINRA Rule 6440, Supplementary Material .01. FINRA believes that the authority to halt beyond the initial ten business day period is vital in the OTC marketplace where concerns regarding settlement and clearance, pricing, or other extraordinary events can take time to be resolved. See Notice, *supra* note 3, 77 FR at 77164.

¹⁷ 15 U.S.C. 78o-3(b).

¹⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁹ 15 U.S.C. 78o-3(b)(6).

²⁰ 15 U.S.C. 78o-3(b)(11).

²¹ 15 U.S.C. 78s(b)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends Rule G-37 to require the public disclosure of additional information related to contributions made by brokers, dealers and municipal securities dealers ("dealers"), their municipal finance professionals ("MFPs"),³ political action committees ("PACs") controlled by the dealer or their MFPs and non-MFP executive officers⁴ (individually, a "covered party" and collectively, "covered parties") to bond ballot campaigns and the municipal securities business⁵

³ Rule G-37(g)(iv) defines municipal finance professional as: (A) Any associated person primarily engaged in municipal securities representative activities (exclusive of sales activities with natural persons); (B) any associated person (including but not limited to any affiliated person of the dealer, as defined in Rule G-38) who solicits municipal securities business; (C) any associated person who is both (i) a municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any persons described in (A) or (B) above; (D) any associated person who is a supervisor of any person described in (C) above up through and including, in the case of a dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities; or (E) any associated person who is a member of the dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank) executive or management committee or similarly situated officials, if any.

⁴ Rule G-37(g)(v) defines non-MFP executive officer as an associated person in charge of a principal business unit, division or function or any other person who performs similar policy making functions for the dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in Rule G-1), but does not include any MFP. Although Rule G-37 requires disclosure of non-MFP executive officer contributions, such contributions do not result in a ban on engaging in municipal securities business.

⁵ Rule G-37(g)(vii) defines municipal securities business as: (A) The purchase of a primary offering of municipal securities from an issuer on other than

engaged in by dealers resulting from voter approval of the bond ballot measure to which such contributions were given. The additional information will be required to be reported on revised MSRB Form G-37⁶ and submitted to the MSRB.⁷ The proposed rule change also amends Rule G-8 to require dealers to maintain records pertaining to the additional information disclosed under the proposed amendments to Rule G-37. The proposed rule change is further described below under "Summary of Proposed Rule Change" and under "Discussion of Comments."

Background

Rule G-37, in effect since 1994, has provided substantial benefits to the industry and the investing public by greatly reducing the direct connection between political contributions given to issuer officials⁸ and the awarding of municipal securities business to dealers. Rule G-37 requires dealers to disclose (on Form G-37) certain contributions to issuer officials, contributions to bond ballot campaigns, and payments to political parties of states and political subdivisions made by covered parties. The rule prohibits dealers from engaging in municipal securities business with an issuer within two years after contributions to an official of such

a competitive bid basis (e.g., a negotiated underwriting); (B) the offer or sale of a primary offering of municipal securities on behalf of any issuer (e.g., a private placement); (C) the provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis; or (D) the provision of remarketing agent services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis.

⁶ MSRB Form G-37 is the document pursuant to which dealers disclose contribution information as currently required by Rule G-37. The form is being revised to conform to the requirements resulting from the proposed rule change.

⁷ Form G-37 is submitted by dealers through the existing MSRB Political Contribution Submission Service, which is the current system that accepts the submissions of Form G-37. Submitted Forms G-37 are made publicly available through the MSRB Web site.

⁸ Rule G-37(g)(vi) defines "official of such issuer" or "official of an issuer" as any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (A) For elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer.

issuer are made by certain covered parties (other than certain permitted *de minimis* contributions).⁹ The rule's prohibition on engaging in municipal securities business is not triggered by contributions that are made to bond ballot campaigns by covered parties.

Bond Ballot Contributions

Since February 1, 2010,¹⁰ the MSRB has required disclosure, under Rule G-37, of non-*de minimis* contributions¹¹ to bond ballot campaigns made by covered parties. Rule G-37 also requires dealers to maintain records of such reportable contributions to bond ballot campaigns pursuant to Rule G-8. The 2010 amendments to Rule G-37 and the corresponding amendments to Rule G-8 resulted, in part, from concerns that contributions by covered parties to bond ballot campaigns could assist dealers with obtaining municipal securities business. The amendments also resulted from the MSRB's concern about the lack of effective transparency regarding bond ballot campaign contributions.¹²

Some industry participants and market observers continue to express concerns regarding the potential adverse effect on the integrity of the municipal securities market from dealer and dealer personnel contributions to bond ballot campaigns.¹³ The proposed rule change addresses these concerns by augmenting the disclosures currently required under Rule G-37. These more detailed disclosures also will help inform the Board whether further action regarding bond ballot campaign contributions is warranted, up to and including a corresponding ban on engaging in

⁹ Contributions made by MFPs to issuer officials for whom such MFP is entitled to vote will not result in a ban on municipal securities business if such contributions, in total, do not exceed \$250 to each issuer official, per election.

¹⁰ See Securities Exchange Act Release No. 61381 (January 20, 2010), 75 FR 4126 (January 26, 2010) (File No. SR-MSRB-2009-18).

¹¹ Dealers are not required to disclose contributions made by MFPs and non-MFP executive officers to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if such contributions, in total, do not exceed \$250 per ballot initiative.

¹² The MSRB noted that the lack of effective transparency results from political contribution disclosure requirements that vary from state to state and the difficulty of locating and extracting the relevant dealer-related and bond initiative-related information from the various public disclosure facilities. See MSRB Notice 2009-35 (June 22, 2009).

¹³ Similar concerns have been expressed with regard to such contributions made by some municipal advisors. The Board expects to consider undertaking parallel rulemaking with respect to municipal advisor contributions to bond ballot campaigns when it develops additional rules for municipal advisors.

municipal securities business as a result of certain contributions.

Summary of Proposed Rule Change

The MSRB requested comment on a draft of the proposed rule change on August 15, 2012.¹⁴ The description of the proposed rule change below revises certain provisions of the draft that was provided for comment in the Request for Comment based on the MSRB's review of comment letters, as further described below and in "Discussion of Comments" below. The proposed rule change revises Rule G-37(e)(i)(B)(2) to provide that, in disclosing the contribution amount made to a bond ballot campaign, the dealer also must include, in the case of in-kind contributions, the value and nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign. The proposed rule change also requires dealers to disclose the specific date on which such contributions to bond ballot campaigns were made.

Proposed Rule G-37(e)(i)(B) requires dealers to disclose the full issuer name and full issue description of any primary offering resulting from voter approval of a bond ballot measure to which a contribution required to be disclosed has been made. All information is required to be reported in the calendar quarter in which the closing date for the issuance that was authorized by the bond ballot measure occurred. The proposed rule change contains a look-back provision for bond ballot campaign contributions that are made by an MFP or a non-MFP executive officer during the two years prior to an individual becoming an MFP or a non-MFP executive officer of a dealer.¹⁵ The look-back provision will limit the additional disclosures required under proposed Rule G-37(e)(i)(B) to those items that would have been required to be disclosed if such individual had been an MFP or a non-MFP executive officer at the time of such contribution. Proposed Rule G-37(e)(i)(B) also requires dealers to disclose both the amount and source of any payments or reimbursements related to any bond ballot contribution,

received by a dealer or its MFPs from any third party.¹⁶

The proposed rule change revises Rule G-37(g) to expand the definition of "contribution" and create a new term, the "reportable date of selection." The proposed amendments to the definition of "contribution" distinguish between contributions made to an official of an issuer and contributions made to a bond ballot campaign. The term "reportable date of selection" is defined to refer to the specific date on which a dealer is selected, either in writing or orally, to engage in municipal securities business that must be reported on Form G-37.

Lastly, conforming amendments to Rule G-8(a)(xvi)(H) and (I) require dealers to maintain records of the supplemental information related to bond ballot campaign contributions that are required to be disclosed on Form G-37 under the proposed rule change.

Effective Date Of Proposed Rule Change

The MSRB requested an effective date for the proposed rule change no later than the start of the second calendar quarter following the date of SEC approval.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act because it is intended to protect investors and the public interest and prevent fraudulent and manipulative acts and practices by adding greater specificity to the public disclosures surrounding contributions made by covered parties to bond ballot campaigns, and any municipal securities business awarded pursuant to such bond ballot measure. Access to such information in a centralized format on the MSRB's Web site (through Form G-37) has and will continue to substantially increase the amount of information available to market participants, thereby increasing market

transparency and strengthening market integrity. The revisions also will assist the MSRB in its on-going review of Rule G-37 and potential conflicts of interest or other practices that may present challenges to the integrity of the municipal securities market related to political contributions by dealers and dealer personnel.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The MSRB solicited comment on the potential burdens of the proposed rule change in the Request for Comment. Among the questions asked were:

- Would the draft amendments help to protect the integrity of the municipal securities market, and are there specific benefits that issuers, investors and the public (including taxpayers) would realize from adopting the draft amendments?
- Would the draft amendments have any negative effects on issuers, investors and the public, or on the fairness, efficiency or overall integrity of the municipal securities market? If so, please describe in detail.
- Dealers are already required to collect, report and retain records of certain information in connection with bond ballot campaigns under the current provisions of Rules G-37 and G-8. What would be the incremental additional burden, if any, to dealers to collect, report and retain records of the additional items of information that would be required under the draft amendments?
- Are there alternative methods to providing the protections sought under the draft amendments that the MSRB should consider and that would be more effective and/or less burdensome?

The specific comments and responses thereto are discussed in Part 5. Of those commenters addressing issues of burdens, two stated that any burden in connection with the proposed rule change would be outweighed by the benefits, and five commenters supported even more expansive regulation to, among other things, ban dealers from making contributions to bond ballot campaigns. The MSRB addressed those commenters that were critical of the burdens from the proposed rule change by clarifying certain definitions and allowing additional time for implementation. The MSRB also notes that dealers already are required to report information on certain contributions and municipal

¹⁴ See MSRB Notice 2012-43 (August 15, 2012) ("Request for Comment").

¹⁵ There is a similar look-back provision in current Rule G-37 for contributions to issuer officials. See Rule G-37(b)(i). As with that provision, disclosure is only required with respect to municipal securities business that results from the bond ballot measure after the effective date of the proposed rule change.

¹⁶ Third parties include issuers.

securities business on Form G-37. The proposed rule change augments existing Rule G-37 by providing greater clarity and context to the information already provided under the rule. The MSRB believes that the burdens resulting from the proposed new disclosures are outweighed by the benefits accruing to investors and the marketplace in general.

The MSRB believes that these incremental burdens are necessary and appropriate to address ongoing concerns of pay-to-play practices with respect to bond ballot campaign contributions. The additional information required to be reported under the proposed rule change should be readily available to dealers and the public and is generally consistent with the type of information currently required to be reported under Rule G-37.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In the Request for Comment,¹⁷ the MSRB requested comment on a draft of the proposed rule change. Specifically, the MSRB sought comment on whether the proposed revisions to Rule G-37 and Rule G-8, as described herein, that would require additional public disclosure of certain information related to contributions made by covered parties to bond ballot campaigns, and the municipal securities business engaged in by dealers resulting from the bond ballot campaign to which they contributed, on revised Form G-37, and the maintenance of records related to such contributions, would be useful and helpful to the market in monitoring and accessing such dealer contribution information. In addition, the Board sought comments from the industry and other interested parties on all aspects of the proposed rule change and the range of practices that are undertaken by dealers, municipal advisors and other market participants in connection with contributions to bond ballot campaigns and related activities that can give rise to concerns regarding the integrity of the municipal securities market.

Discussion Of Comments

Comments on the Request for Comment were received from: (1) Barclays; (2) California Association of County Treasurers and Tax Collectors ("CACTTC"); (3) Center for Competitive Politics ("CCP"); (4) Government Financial Strategies Inc. ("GFS"); (5) Magis Advisors ("Magis"); (6) Morgan Stanley; (7) National Association of

Independent Public Finance Advisors ("NAIPFA"); and (8) Securities Industry and Financial Markets Association ("SIFMA"). Summaries of these comments and the MSRB's responses follow.

General Support

Comments: Barclays stated the "Board has clearly identified the legitimate concerns of industry participants and market observers regarding the adverse effect bond ballot activity by dealers and MFPs has on the integrity of the municipal securities market. Such concerns have a tendency to extend beyond issuances supported by bond ballot campaigns and reflect poorly on our industry as a whole." GFS stated that the disclosures contemplated by the proposed rule change would be an important step in preventing pay-to-play activities related to bond ballot campaign contributions. The MSRB discusses additional comments from these and other commenters below.

The Board should consider amendments to Rule G-37 to ban dealer contributions to bond ballot campaigns, or impose a ban on future business similar to that for certain dealer campaign contributions to issuer officials.

Comments: CACTTC recommended that the MSRB consider amendments to the rule that would include, "an outright ban on brokers, dealers, or any other municipal finance professionals from contributing to bond ballot measures and/or their related committees" and argued that such a "ban would simply expand the existing ban on political contributions to public officials involved in approving related bond transactions."¹⁸ CACTTC stated that pay-to-play activities in municipal bond elections and transactions undermines the competitive process that ensures that taxpayer money is spent in the most efficient and effective manner and suggested that the MSRB amend Rule G-37 to "either shed light on or eliminate pay-to-play activities." Magis expressed opposition to any circumstance where any market professional is permitted to directly, or indirectly, contribute to bond ballot campaigns that serve the interests of such a participant.

Barclays asked the Board to seek a more direct means to "address conflicts of interest, actual and apparent, raised by cash and in-kind contributions of

dealers and their municipal finance personnel ("MFPs") to bond ballot campaigns." Barclays suggested that the Board consider measures that would prohibit dealers from engaging in municipal securities business for a clearly defined period of time after the dealer or any of its MFPs has made a non-*de minimis* cash or in-kind contribution to support a bond ballot campaign authorizing such municipal securities business. Barclays argued that the terms of such a prohibition should not turn on whether a dealer expects to be, or is, reimbursed for such contributions, and should apply with respect to the kinds of support activities identified in the Request for Comment¹⁹ (e.g., polling) whether or not local law would permit an issuer to engage in such activity.

Morgan Stanley cited a San Francisco Chronicle article that observed that "in 150 of 155 cases (97%) where a dealer contributed to support a bond ballot election that authorized the bonds the underwriter was hired to underwrite" and stated that "[t]he continued allowance of this widely perceived pay-to-play practice damages the integrity of the municipal marketplace and allows outsiders (regulators, journalists and politicians) to question the practices of our marketplace." NAIPFA stated that the proposed amendments to Rule G-37 do not go far enough in terms of curtailing the practice of contributing to bond ballot campaign committees and will likely not have a significant impact on such contributions. NAIPFA also stated that it is unsure how the amendments alone will benefit issuers or the public interest since the proposed rule change does not prohibit or limit the practice of contributions to bond ballot campaigns. Finally, NAIPFA stated that bond ballot contributions are often made, "for the purpose of influencing the selection or retention of underwriters, and are thus the equivalent of the impermissible pay-to-play contributions already banned under current Rule G-37." GFS believes that further action will be warranted as the Board continues to examine this area of rulemaking.

MSRB Response: The MSRB believes that the additional disclosures required by the proposed rule change are an appropriate regulatory response to the concerns identified. The MSRB believes that providing public access to disclosures of dealer contributions to bond ballot campaigns in a centralized format on the MSRB's Web site (through Form G-37) has substantially increased the amount of information available to

¹⁷ See footnote 14.

¹⁸ CACTTC indicated that the bond ballot contribution problem is most prevalent for school district financings in California due to proposition 39. The proposition was enacted in 2000 and, lowered to 55% from 66%, the amount of voter approval needed to approve a bond ballot measure.

¹⁹ See footnote 14.

market participants, thereby increasing market transparency and strengthening market integrity.

The information gathered pursuant to the proposed rule change, coupled with the existing requirements of Rule G-37, will assist the Board as it continues to monitor dealer and dealer personnel contribution disclosures. Such monitoring will allow the Board to determine, in the future, whether a corresponding ban on business, as a result of such contributions, would be necessary to address any real or perceived linkage between such contributions to bond ballot campaigns (and related activities) and the award of municipal securities business.

The MSRB should amend Rule G-37 to request certain additional disclosures related to dealers' and their MFPs' contributions to bond ballot campaigns.

Comments: CACTTC supported the additional disclosure requirements for bond ballot campaigns and stated that an amendment to Rule G-37 is "necessary to reduce the perception of pay-to-play and to help ensure that underwriters and other municipal financial professionals are not awarded bond transactions because they have contributed to related bond ballot measures." SIFMA²⁰ also supported the proposed rule change to require disclosure of whether a dealer or any of its MFPs or non-MFP executive officers received payments or reimbursements, related to any bond issuance resulting from a bond ballot campaign to which the dealer, its MFP or non-MFP executive officer or applicable PAC contributed, from any third party. SIFMA stated that these payments or reimbursements are not common and should be disclosed. SIFMA stated that such payments would be known to the dealer and disclosure would not cause much burden on the dealer and it would be material if any such payments were made. SIFMA also supported the proposed rule change to require dealers to provide the complete name of the entity that will issue the bonds that were authorized by the bond ballot campaign, to which a contribution was made by the dealer, its MFP or non-MFP executive officer (other than a *de minimis* contribution) or applicable PAC. SIFMA stated that the name of the issuer is always known by the dealer and would be beneficial if disclosed on Form G-37 and that such increased transparency would create more benefits than burdens on the regulated dealer community.

²⁰ Morgan Stanley supports the SIFMA comment letter.

GFS expressed concern about the lack of transparency in school bond campaign fundings and how it leads to corruption. GFS stated that it would be helpful to place in the public record information regarding the specific issuers and bond issues implicated through the actions of MFPs. GFS suggested requiring the disclosure, "of compensation in excess of general industry compensation practices * * *." GFS also suggested requiring the disclosure of relevant information to investors when firms participating in the bond issue have contributed to election campaigns and the election campaigns to which the underwriters have contributed are administered by municipal advisors. Magis stated that there may be compelling reasons to require that disclosure of potential conflicts of interest also be made in official statements "in order to avoid introducing error or omission to the issuer's official statement." GFS also recommended requiring reporting of payments made by underwriters to (not only payments received from) other professionals, such as financial advisors and election advisors and channeled through bond ballot campaigns.

MSRB Response: The MSRB believes that the additional disclosures that will be required under the proposed rule change provide the appropriate types of information that should be disclosed to the general public, including investors, about when firms participating in bond issues have contributed to election campaigns, by providing additional information that has not previously been collected and made available to the public. Such additional information includes: (a) Requiring dealers to disclose the full issuer name and the full issue description, which will provide increased public disclosure of the specific primary offering or offerings that resulted from the bond ballot campaign to which the dealer, or their personnel, contributed and was required to disclose under existing Rule G-37; and (b) requiring dealers to disclose additional information about in-kind contributions that are made to bond ballot campaigns, including the value and nature of goods and services that are provided to the campaign and any ancillary services that are provided to, on behalf of, or in furtherance of the bond ballot campaign by a dealer.

The MSRB does not believe there presently is a readily accessible standard or a "base-line" level of compensation for municipal securities transactions that would allow disclosure of "excess" compensation as urged by GFS. In response to comments suggesting that dealers should disclose

whether a bond ballot campaign is administered by a municipal advisor, the MSRB believes that actual knowledge of whether the bond ballot campaign is administered by a municipal advisor would be required, and that such information is not generally known or available to support a comprehensive disclosure standard for the industry at this time.

In response to Magis's suggestion to require the disclosure of potential conflicts of interest in official statements, the MSRB notes that it does not have regulatory authority over issuers, and therefore does not have the authority to establish requirements regarding the content of official statements. The MSRB believes that GFS's recommendation to report the payments made by underwriters to other professionals that may be channeled through bond election campaigns is not necessary because, to the extent that such payments would represent indirect contributions by the dealer to a bond ballot campaign, such indirect contributions already are required to be disclosed under current Rule G-37.

The proposed amendments to Rule G-37 raise constitutional concerns.

Comments: CCP noted its concerns that "the Board may take further action regarding dealer and dealer personnel contributions to bond ballot campaigns, up to and including a corresponding ban on business as a result of certain contributions." CCP stated that the Board has overlooked the long-standing constitutional distinction between contributions to candidates and those given to support or oppose ballot initiatives. "Simply put, ballot measure committees receive stronger constitutional protection against government regulation than do candidates." CCP also argued that the MSRB's concern about certain practices related to bond ballot campaigns have nothing to do with the creation of a *quid pro quo* arrangement between the bond ballot measure committee and the contributors because the bond ballot measure committee is, under the law, an entirely separate entity from the issuer. "There is no identity of interests between the person supported for election and the person making hiring and issuing decisions, as is the case in the candidate context and as the D.C. Circuit required in *Blount*. The Board's announcement and analysis make no mention of this crucial distinction." CCP suggested that the Board take into consideration the fact that "ballot issue, ballot measure, and independent expenditure committees are granted far more constitutional protection than are candidate committees."

MSRB Response: The MSRB recognizes the distinctions between contributions to candidates and bond ballot campaigns. The MSRB believes that the requirement under the proposed rule change to have dealers provides additional, basic information pertaining to contributions to bond ballot campaigns and any subsequent municipal securities business does not impinge upon the First Amendment rights of individuals and/or firms that will be responsible for providing disclosure of bond ballot campaign contributions.²¹ As noted previously, the proposed rule change only will require disclosure of additional information pertaining to contributions to, and municipal securities business from, bond ballot campaigns and will not prohibit contributions to such campaigns.

Certain dealer and dealer personnel contributions to, and activities related to, bond ballot campaigns violate state laws in certain jurisdictions.

Comments: Magis cited an opinion of the California Legislative Counsel's Office that "a school district or other local agency may not condition the award of an agreement to provide bond underwriting services on the underwriter also providing campaign services in support of that bond measure or another bond measure proposed by the school district or other local agency." Magis also stated that California law prohibits the expenditure of public monies on electioneering.

GFS argued that certain bond ballot campaign practices are contrary to the Best Practice recommendation of the Government Finance Officers Association and that

[t]here are variations in bond election contribution patterns. Other underwriters simply administer bond election campaigns themselves. In doing so, those firms provide both monetary and in-kind value. Those underwriters may advertise this function as a "service" provided to issuers. Yet, in California and other states the issuers cannot administer bond election campaigns themselves. Still, in those facts and circumstances, the issuers invariably employ those underwriters to underwrite the bonds the voters approve. The practice has the appearance of those issuers doing indirectly through municipal finance professionals what the issuers cannot do directly.

²¹ In *Blount v. Securities and Exchange Commission*, 61 F.3d 938, 948 (DC Cir. 1995), the District Court determined that existing Rule G-37 advanced a compelling governmental interest to protect investors that did not abridge First Amendment rights and stated that "municipal finance professionals are not in any way restricted from engaging in the vast majority of political activities, including making direct expenditures for the expression of their views * * *."

MSRB Response: The MSRB has previously stated that contributions and expenditures by certain dealers and dealer personnel may assist an issuer in avoiding state law restrictions, and depending on the totality of the facts and circumstances, could independently violate Rule G-17, even if not precluded by Rule G-37.²² The MSRB does not believe that any additional changes in Rule G-37 are necessary at this time.

The proposed amendments to the definitions of "contribution" and "de minimis" in Rule G-37 are problematic.

Comments: SIFMA stated that including election services or collateral work provided on behalf of an issuer, in addition to work done on behalf of a bond ballot campaign committee, in the revised definition of "contribution" to include the full range of cash and in-kind contributions is a significant change that greatly expands the scope of the reporting obligations to cover frequent routine communications between issuers and underwriters. SIFMA believes the proposed amendment blurs the line between work done for the bond ballot campaign committee which is to be reported on Form G-37 and traditional work for the issuer completed as part of the public finance transaction. SIFMA stated that only in-kind contributions to the bond ballot committee itself should be reportable and that references to work provided to the issuer should be struck from the proposed rule change. SIFMA argued that it would be burdensome on the dealer community to separately distinguish, track, quantify and report such information to the MSRB. SIFMA agreed that work done for or contributions made to the actual bond ballot campaign committee should be disclosed, as the bond ballot campaign committee is a separate legal entity from the issuer.

²² MSRB Rule G-17 provides that, in the conduct of its municipal securities or municipal advisory activities, each dealer and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice. These principles of fair practice have previously been viewed as applicable in the context of the MSRB's efforts to eliminate pay-to-play activities in the municipal securities market. *See, e.g.*, MSRB Notice 2003-32 (August 6, 2003); *In the Matter of Pryor, McClendon, Counts & Co. et al.*, Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order (February 6, 2002) (broker-dealer violated Rule G-17 by concealing certain political contributions that would have triggered a ban on business under Rule G-37). *See also* MSRB Reports, Draft Rule G-37, Concerning Political Contributions in the Municipal Securities Market, Volume 13, Number 4 (August, 1993); Testimony of Charles W. Fish, Chairman, Municipal Securities Rulemaking Board before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce, United States House of Representatives (September 7, 1993) at 59, n.86.

NAIPFA stated its support of the MSRB's proposed amendment to address "in-kind" contributions. GFS stated that it would be helpful to include reporting of in-kind contributions and the value of in-kind contributions, which are excluded from current reporting requirements under Rule G-37.

MSRB Response: The MSRB believes the public disclosure of all political contributions, including cash and in-kind services, will allow for greater public scrutiny of such contributions and the potential connection between them and the awarding of municipal securities business. However, the MSRB agrees that the definition of "contribution" should not include work provided to or on behalf of the issuer that is related to the completion of municipal securities business. The MSRB has amended the proposed rule change to clarify the appropriate nexus between ancillary services provided to, on behalf of, or in furtherance of a bond ballot campaign by a dealer or dealer personnel. The revisions will assist with clarifying that in-kind contributions that would be required to be reported by dealers will solely be required with respect to activities related to a bond ballot campaign and not with respect to activities undertaken to complete the associated municipal securities business.

The MSRB also notes that the term "contribution," as defined in Rule G-37, includes anything of value, which has been interpreted to include in-kind contributions.²³ The proposed rule change will establish that the disclosure of in-kind contributions must include both the value and the nature of the goods or services provided.

The proposed amendments will impose undue burdens on dealers.

Comment: CCP stated that the proposed rule change would impose only recordkeeping burdens and would do little to advance the MSRB's anticorruption mission. CCP stated that the recordkeeping requirements for in-kind contributions do little to prevent corruption and would chill a kind of political participation—volunteer work. In addition, CCP stated that by requiring recordkeeping of non-*de minimis* contributions, and defining such contributions at the same rate as those

²³ *See* Rule G-37 Interpretations, Questions and Answers Concerning Political Contributions and Prohibitions on Municipal Securities Business: Rule G-37, Question II. 18 (May 24, 1994). For example, if a MFP uses dealer's resources (*e.g.*, a political position paper prepared by dealer personnel) or incurs expenses in the conduct of dealer volunteer work (*e.g.*, hosting a reception), then the value of such resources or expenses would constitute a contribution.

for candidates, the proposed revisions conflate contributions to candidates with those to support or oppose ballot initiatives.

MSRB Response: The MSRB believes the requirements of the proposed rule change are necessary and appropriate and will assist the Board and the public in determining whether the awarding of municipal securities business is linked to certain dealer and dealer personnel contributions to bond ballot campaigns. The proposed rule change will assist with advancing the anticorruption objective of Rule G–37. The MSRB believes that potential burdens that may be caused by the recordkeeping requirements of the proposed rule change will be offset by the benefits to the MSRB and the public through greater clarity and context to existing bond ballot campaign contribution disclosures. The MSRB notes that dealers currently report certain political campaign contributions and the increased reporting and submission requirements of the proposed rule change will only involve a slight, incremental increase to existing requirements.

The MSRB also notes that certain dealers also are required to report bond ballot contribution information at the state and local level. These requirements demonstrate the strong public interest for reporting such contributions, and for dealers in such jurisdictions, the burdens of the proposed rule change are arguably even lower.

The MSRB does not believe that the proposed rule change will prohibit or regulate personal volunteer work by dealers and MFPs nor will it chill volunteer work as suggested by CCP. The proposed rule change will require the disclosure of the contribution amounts that are made to bond ballot campaigns by covered parties which, in the case of in-kind contributions, include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign. As with existing Rule G–37, the proposed rule change does not prohibit or restrict individual personal volunteer work.²⁴

²⁴ *Ibid.* The MSRB has previously provided guidance regarding the treatment of contributions as the use of dealer resources or the incurrence of expenses by dealers in connection with a political campaign. The MSRB has made clear that Rule G–37 does not prohibit or limit individuals from providing volunteer services in support of an issuer official, and has also noted that certain incidental expenses incurred by such individual would generally not be treated as a contribution. See Rule G–37 Question and Answer II.18 (May 24, 1994).

The MSRB does not agree with CCP's comment that defining *de minimis* contributions at the same level as those for candidates, and the attendant recordkeeping requirements for in-kind contributions, is improper. Rather, the MSRB believes that there are efficiencies in maintaining consistent *de minimis* levels for Rule G–37, even with respect to in-kind contributions.

Comment: SIFMA stated that requiring the dealer to provide the specific date on which a contribution was given by the dealer to the bond ballot campaign is burdensome depending upon the number of non-*de minimis* reportable contributions that need to be tracked and reported to the MSRB. SIFMA requested that the MSRB not expand the Form G–37 disclosure to include the specific date the dealer was selected to engage in municipal securities business because the date the dealer was selected to engage in such municipal securities business may not be clear or ascertainable by the dealer. SIFMA believes that each issuer typically has its own method for the selection and final approval of underwriters, which makes it difficult or impossible to standardize the process.

MSRB Response: In response to SIFMA's concern over difficulties in identifying the precise date when a dealer is selected to engage in a municipal securities business, the MSRB has proposed defining a new term: "reportable date of selection." Specifically, the "reportable date of selection" will be the date of the earliest to occur of (i) The execution of an engagement letter, (ii) the execution of a bond purchase agreement, or (iii) the receipt of formal notification (provided either in writing or orally) from, or on behalf of, the issuer that the dealer has been selected to engage in municipal securities business.

Comments: SIFMA requested that any rule change be applied from its effective date forward, with no contributions made, or transactions sold or issued before the effective date of the rule, be

For example, personal expenses incurred by an MFP in the conduct of volunteer work, which expenses are purely incidental to the volunteer work and are unreimbursed by the dealer (*e.g.*, cab fares and personal meals), would not constitute a contribution. Also see Rule G–37, Question II.19 (August 18, 1994). An employee of a dealer generally can donate their time to an issuer official's campaign without such time being viewed as a contribution by the dealer to the official, so long as the employee is volunteering his or her time during non-work hours, or is using previously accrued vacation time or the dealer is not otherwise paying the employee's salary (*e.g.*, an unpaid leave of absence). These principles would apply equally to individuals providing volunteer services in connection with a bond ballot campaign.

subject to reporting. SIFMA proposed "a two-year look back for contributions by current individual MFPs or non-MFPs executive officers for bond ballot campaign contributions that result in a municipal bond offering underwritten by the dealer, to be phased in from the effective date of the rule."²⁵ SIFMA also proposed a limitation on reporting municipal securities business resulting from a bond ballot campaign to which a contribution was made so that the dealer would only be required to look back two years prior to the business being undertaken, and that "transactions underwritten by the dealer after a contribution was made to a bond ballot campaign committee by a former employee should not need to be reported."

NAIPFA stated that "any burden, incremental or otherwise, placed upon municipal market participants in connection with the imposition of the Amendments will be outweighed by the benefits that the Amendments will have to the municipal market in terms of improving hiring practices, market transparency, and the policing" of dealer contributions to bond ballot campaigns. Similarly, GFS stated that it does not believe the disclosure requirements that are contemplated by the proposed rule change would impose undue burdens on underwriters, nor would a future extension of the disclosure requirements to municipal advisors.

MSRB Response: The MSRB believes that the proposed rule change should only apply with respect to municipal securities business with a sale or issuance date on or after the effective date of the proposed rule change. As a result, dealers will not be required to supplement the bond ballot campaign disclosures made with respect to offerings prior to the effective date. However, with respect to offerings after the effective date, dealers must look back at any contribution made by a covered party on or after February 1, 2010 (the date on which dealers were first required to record and disclose contributions to bond ballot campaigns).²⁶

In addition, the MSRB believes that the look-back provisions for contributions made by an individual prior to becoming an MFP or a non-MFP executive officer of a dealer should be limited to two years, consistent with the existing timeframe for which such

²⁵ SIFMA also stated any applicable look back provision should not take into account contributions made, or transactions sold or issued before the effective date of the rule.

²⁶ See footnote 10.

contributions are ordinarily attributable to the dealer under Rule G-37. The MSRB also believes that dealers must continue to report primary offerings pertaining to bond ballot campaign contributions of an MFP or non-MFP executive officer that left the dealer, as such contributions are properly attributable to such dealer.

The proposed amendments to Rule G-37 should apply to municipal advisors.

Comments: NAIPFA believes that municipal advisors should be subject to the proposed amendments when and if adopted. In addition, NAIPFA supported the inclusion of municipal advisors within the provisions of current Rule G-37 and, in particular, those portions contained within Rule G-37(c) and (d) in order to prevent municipal advisors from circumventing their disclosure obligations as well as the ban on campaign contributions. GFS stated that “[a]mong other things, once the definition of the ‘municipal advisor’ concept is finalized by the Securities and Exchange Commission, financial advisors and other municipal advisors can be brought within the scope of the regulation.” Magis and SIFMA also supported the application of the proposed amendments to municipal advisors.

MSRB Response: The MSRB previously proposed a new rule that would apply pay-to-play restrictions to municipal advisors but withdrew such proposal pending final rulemaking by the SEC on a permanent municipal advisor registration rule and related definitional matters.²⁷ The MSRB will consider including the same types of disclosures required by the proposed rule change in any such rule it may propose in the future with regard to municipal advisors.

Rule G-37 should have more timely and/or expansive reporting requirements.

Comments: GFS recommended that the Board consider requiring reporting promptly after contributions are made, and in any event, prior to elections and in time to inform the electorate. Magis expressed concern that existing Form G-37 submissions by underwriters occur only quarterly and suggested that the Board consider “more timely disclosure of these conflicts of interest prior to the bond election. * * *”

MSRB Response: The MSRB believes that the current quarterly reporting scheme required under Rule G-37 provides adequate and timely information about dealer and dealer personnel contributions to bond ballot

campaigns and does not intend to expand the reporting requirements at this time.

The EMMA system should provide for easier access to the disclosures submitted by dealers relating to bond ballot campaign contributions and related information.

Comments: GFS stated that “EMMA’s online campaign contribution report records are difficult to search in a systematic manner. For example, EMMA’s records cannot be searched at present by issuer names or titles of bond issues, which voters may wish to do.” GFS recommended making campaign contribution reports more easily searchable on EMMA by issuer name and by titles of bond issues. Magis also stated that EMMA is exceedingly difficult to search by issuer name because the records are “dealer name-centric.” Magis supports the ability to access Form G-37 information by state or type of issuer.

MSRB Response: Comments about the usability and functionality of disclosure on EMMA are beyond the scope of the proposed rule change. The MSRB is continually evaluating the effectiveness of EMMA and may consider initiating such changes in the future.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MSRB-2013-01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2013-01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2013-01 and should be submitted on or before March 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Kevin M. O’Neill,

Deputy Secretary.

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²⁷ See MSRB Notice 2011-46 (August 19, 2011); MSRB Notice 2011-51 (September 12, 2011).

²⁸ 17 CFR 200.30-3(a)(12).